IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6144 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJIBHAI CHHAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI with
MR RM CHHAYA for Petitioners
MR SP SEN AGP for Respondent No. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/2001

ORAL JUDGEMENT

Heard the learned advocates.

Learned advocate Mr. Nanavati has submitted that name of one of the declarants Shri Kanjibhai Chhaganbhai has inadvertently not been included as one of the petitioners in the cause title, though he is a party aggrieved and has signed the Vakalatnama. Leave to implead Shri Kanjibhai Chhaganbhai as the petitioner no. 6. Leave to correct the typographical errors in the cause title of the petition.

It appears that the land bearing survey no. 247/1-paiki of village Chitra, District-Bhavnagar belong to one Chhaganbhai. On the date of commencement of the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, `the Act'], the said Chhaganbhai had died leaving four sons viz., Bhakabhai Chhaganbhai, Sanjibhai Chhaganbhai, Manjibhai Chhaganbhai and Kanjibhai Chhaganbhai and the daughters Lakhuba Chhaganbhai and Laxmiben Chhaganbhai. The said Bhakabhai Chhaganbhai for the self and as the constituted attorney of the others, filed a statement under section 6 (1) of the Act declaring the holding of the said declarants. The competent authority, after following the due procedure and after making concession for the land for which agricultural exemption was granted under section 20 (1) of the Act, under his order dated 18th July, 1984, declared the declarants' holding to the extent of 49,004 sq.mtrs. as the `excess vacant land' under the Act. The said order was served upon Jayantibhai Bhakabhai, the son of the said Bhakabhai Chhaganbhai on behalf of all. There being no challenge to the said order dated 18th July, 1984 the matter had been proceeded further and the said `excess vacant land' was vested in the State Government by issuing Notification on 26th August, 1985 under section 10 (3) of the Act which was published in the official gazette on 12th December, 1985. Notice for handing over possession under section 10 (5) of the Act was issued on 31st December, 1987 and on 11th January, 1988. On receipt of the said notice, the petitioners ie., one Jayantibhai Bhakabhai [son of the above referred Bhakabhai Chhaganbhai who had in the meantime died in the year 1986], Sanjibhai Chhaganbhai and Kanjibhai Chhaganbhai preferred Appeal No. 19 of 1987 before the Urban Land Tribunal. The learned Tribunal was, under its order dated 12th October, 1987 pleased to dismiss the appeal on the ground of delay alone. Feeling aggrieved, the petitioners have preferred the above petition.

Mr. Nanavati has submitted that the appellants had no reason not to prefer the appeal before the learned

Tribunal though there land to the extent of 49,004 sq.mts. was declared to be excess vacant land. However, neither of the petitioners was aware of the order dated 18th July, 1984 made by the competent authority. As it is evident, the said order was served upon Jayantibhai Bhakabhai and not upon any of the declarants. The service made upon Jayantibhai Bhakabhai cannot be said to be a service, as envisaged under the Act. The Tribunal, therefore, ought to have condoned the delay and to have decided the appeal on merits. He has further submitted that in any view of the matter, pending this petition, this Court had ordered status quo to be maintained, the possession of the `excess vacant land' has thus continued to be with the petitioners and the petitioners have been cultivating the said excess vacant till the date. In support of his contention, Mr. Nanavati has relied upon the extract of the village form 7/12 which shows presence of the heirs of Bhakabhai Chhaganbhai right from the year 1991-92 till the year 2000-2001. Mr. Nanavati has submitted that pending this petition, the Act has been repealed under the Urban Land [Ceiling & Regulation] {Repeal} Act, 1999 [hereinafter referred to as, `the Repeal Act']. In view of the repeal of the Act, all proceedings taken under the Act shall stand abated and the petitioners are entitled to retain the possession of the `excess vacant land'. Mr. Nanavati has relied upon judgment of this Court in the matter of Dahyabhai Manorbhai Patel v. The Competent Authority & Additional Collector, Unit No. 2, Vadodara & Anr.,[1987 (2) GLR 1396]. He has more particularly relied upon paragraph 3 of the judgement and has submitted that the Tribunal ought to have condoned the delay and decided the appeal on merits. He has also relied upon the averments made in paragraph 4 {e} of the petition. He has submitted that after the appeal was dismissed, the petitioners had applied for agricultural exemption in respect of the said excess vacant land. Pending the said application for agricultural exemption, the petitioner had no cause of action to challenge the order of the Tribunal before this Court. The application for agricultural exemption under section 20 (1) of the Act in respect of the `excess vacant land' was rejected under the communication dated 29th February, 1988 and under further communication dated 2nd June, 1988.

The State has contested the petition. In the counter affidavit, it is stated that after issuance of notice under section 10 {5} of the Act, the possession of the excess vacant land was taken over on 20th January, 1988. The Repeal of the Act, therefore, shall not apply

to the vesting of the `excess vacant land' in the State Government. Mr. Sen, after perusing the records has stated that the order of the Competent Authority dated 18th July, 1984 was served upon late Shri Bhakabhai Chhaganbhai by registered post which the said Bhakabhai Chhaganbhai refused to accept. The postal endorsement indicates that the service was attempted to be madeon several dates and the endorsement of refusal had been made on 8th August, 1984. Mr. Sen has, therefore, submitted that the order of the competent authority was duly served upon the late Bhakabhai Chhaganbhai and the said Bhakabhai Chhaganbhai, therefore, should be deemed to have knowledge of the said order. The appeal preferred to the Tribunal three years after the date of the order of the competent authority was rightly rejected by the Tribunal. Besides, there has been a further delay ie., order of the Tribunal dated 12th October, 1987 has been challenged before this Court in the month of September, 1989 ie., 2 years after the date of the said order. In any view of the matter, the possession of the excess vacant land having been taken over by the State in the month of January, 1988, the question of restoration of the land to the petitioners does not arise.

Pending this petition, the Act has been repealed on and with effect from 30th March, 1999 under the Repeal Act. Sections 2,3 & 4 of the Repeal Act read as under :-

`2. The Urban Land (Ceiling & Regulation) Act, 1976 [hereinafter referred to as the principal Act] is hereby repealed.

3. The repeal of the principal Act shall not effect :-

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action takne there under, not withstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Whereas -

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been takne over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(c) any amount has been paid by the State Government with respect to such land,

then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the principal Act pending immediatley before the commencement of this Act, before any court, tribunal or other authority shall abate :

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 & 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.'

In view of the Repeal of the Act, in my view, the matters at issue in this petition have been rendered academic and need not be decided. The question, therefore, should be whether after vesting of the said excess vacant land in the State Government, the State Government has taken over possession of the land, as envisaged under section 10 (6) of the Act or whether the possession of the said excess vacant land continues with the petitioners. Though it has been stated on oath that the possession was taken over on 20th January, 1988, the statement made in this behalf is vague in as much as the same is not supported

by the documentary evidence. All throughout these years, the said excess vacant land has been cultivated by the petitioners as recorded in the above referred village form no. 12. It does appear that though the said land was held to be excess vacant land and the possession thereof was taken over on 20th January, 1988, in presence of panch as alleged, either the State Government permitted the petitioners to continue to be in possession of the excess vacant land or the petitioners re-entered the land after the possession of the same was taken over by the State Government. In the later case, the petitioners' possession of the said excess vacant land cannot be said to be lawful and authorized and the petitioners cannot avail of the benefit under Sec. 4 of the Repeal Act. Once the excess vacant land is vested in the Government under section 10 (3) of the Act and the possession has been taken over by the State Government in consonance with section 10 (6) of the Act, the acquisition proceedings stand completed and cannot be challenged. If the petitioners have reentered the lands and occupied it after taking over of the possession, such possession cannot be said to be lawful or authorized so as to attract the provisions of the Repeal Act. This being a disputed question of fact, cannot be decided in the present petition preferred under Arts. 226 & 227 of the Constitution of India. The petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated. The petitioners shall be at liberty to establish their lawful possession by approaching the Civil Court having jurisdiction over the subject matter. Mr. Nanavati requests that the status quo ordered to be maintained pending this petition be maintained for a further period of one month. Request is granted. The status quo ordered to be maintained pending this petition shall continue till 31st August, 2001.

[Ms. R.M Doshit, J.]

Prakash*